IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9775 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVINBHAI RAMNIKLAL MANEK

Versus

STATE OF GUJARAT

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 3

MS PJ DAVAWALA for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/03/2000

ORAL JUDGEMENT

1. The Joint Secretary to the Government of Gujarat, Food and Civil Supplies Department, on behalf of the State Government, passed on order on October 20, 1999, against the petitioner, in exercise of powers under

Section 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("PBM Act" for short), detaining him under the provisions of the said Act. The petitioner challenges that order in this petition under Article 226 of the Constitution.

2. The grounds of detention indicate that the State Government found that the petitioner was indulged in black marketing of edible oil. The petitioner held licence as a wholesaler and as commission agent for trading in edible oil. It was notice that large stocks of edible oil were sent by various entrepreneurs from Pethapur, Junagadh, etc. to the petitioner, which the petitioner did not take on his record or books. It was also found that there was some jugglery in the bills and the figures. Tipper trucks, passenger auto rickshaws, water tankers, trailors, etc. were shown to have carried edible oil in large quantity and, therefore, it was found that the petitioner was indulged into activities which are detrimental to smooth supply of essential commodities like edible oil and, therefore, the order was passed.

3. The petitioner has raised many contentions in the petitions to assail the order of detention. The main ground which is raised and relied upon by learned advocate Mr. Gondalia, appearing for Mr. Lakhani, learned advocate for the petitioner, is that a representation made to the Central Government was decided belatedly. The Central Government, on receiving the representation, called for remarks of the State Government, which was, in fact, not required to be called for as the Central Government already had a report of the State Government about the detention. This has resulted into delayed decision of the representation and the continued detention is, therefore, rendered bad. Another fold of argument of Mr. Gondalia is that, it is not certain as to at whose instance the parawise remarks were called for. Whether there was application of mind by the competent authority on representation while calling for the parawise remarks of the State Government is not indicated in the affidavit in reply filed by the Central Government and, therefore, the detention would be rendered bad in law. Mr. Gondalia has placed reliance on the decision of the Apex Court in the case of R. Paulsamy v. Union of India, (1999) 4 SCC 415.

4. Mr. K.T. Dave, learned Additional Public Prosecutor, has opposed the petition on behalf of the detaining authority and the State Government, whereas Ms. Davawala has opposed the petition on behalf of the

Central Government.

5. It appears that a representation was made to the Central Government on December 9, 1999. The Central Government telegraphically called for parawise remarks from the State Government. The telegram was received by the State Government on 13th December, 1999 and parawise remarks were sent on 18th December, 1999 by the State Government, which was received by the Central Government on 21st December, 1999 and the representation was decided on 25th December, 1999. The order was passed on October 20, 1999 and, as such, the State Government was required to make a report to the Central Government within seven days from the date of order. It is nobody's case that such report was not sent and, therefore, taking an outer date, the report can be presumed to be with the Central Government by 27th October, 1999. It transpires from the affidavit that it was sent on 25th October, 1999 and, therefore, when the representation was received by the Central Government on 9th December, 1999, the Central Government already had with it the report of the State Government. The affidavit in reply does not state as to what prompted the Central Government to call for the parawise remarks. What were the points that were not dealt with in the report and were made out in the representation which necessitated calling for the remarks is not brought on record. It is also not clear from the affidavit in reply as to whether the parawise remarks were called for at the instance of the competent authority and, therefore, whether, at that stage, there was application of mind by the competent authority to the representation while calling for the parawise remarks is also uncertain. In this view of the matter, there appears to be a good ground for entertaining this petition and quashing the order of detention. In this regard, decision in the case of R. Paulsamy (supra) may be profitably be considered.

6. In view of the above discussion, this petition is allowed. The impugned order of detention dated October 20, 1999, passed against the detenu is hereby quashed. The detenu-Pravinbhai Ramniklal Manek is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs. Direct service is permitted.

[A.L. DAVE, J.]

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